IN THE HIGH COURT OF DELHI

CM(M) No. 360/2007

Sh. Adarsh Kumar Jain ..... Petitioner
! through: Mr. L.B.Rai, Advocate

VERSUS

$ Multi Engineering Services ..... Respondent
^ through: Mr. Pawan Bahl, Advocate

% DATE OF DECISION: 14.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)
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1. Petitioner is the plaintiff. He is aggrieved by the order dated 16.1.2007 declining the prayer made to amend the plaint. Reason which has weighed with the court is that inspite of the objection taken in the written statement to the maintainability of the suit, written statement being filed on 23.2.2000, amendment was sought only on 18.9.2005. In the interregnum issues were framed and plaintiff filed affidavit by way of evidence. He failed to subject himself to cross-

examination and repeatedly sought adjournment.

2. Petitioner was appointed as a Manager by the respondent and his services were terminated on 12.8.1999. He filed a suit for declaration praying that letter of termination be declared null and void. He sought mandatory injunction to be reinstated in service. He also prayed that a decree in sum of Rs.1,03,700/- for past dues. Prayer 'D' in the plaint was to direct the defendant to pay to him salary @ Rs. 32,650/- p.m. by way of mesne profits till he is reinstated.

3. Plaintiff realized that he can not be reinstated and has to seek quantified damages; that loss of salary could not be claimed as mesne profits. He sought amendment by quantifying the damages.

4. Learned Trial Judge has dismissed the application for amendment holding that it has been filed belatedly and after the trial had commenced. It has also been opined that by way of amendment a suit for declaration is being converted into a suit for damages.

5. I note that the suit was filed on 16.10.1999 much prior to the amendments incorporated in the Code of Civil Procedure by and under the Amendment Act 22 of 2002. Thus, the pre-amended provisions of Order 6 Rule 17 CPC

would

govern the adjudication of the application in question.

6. As held by the Supreme Court in the decision reported as AIR 2002 SC 3369, *Sampat Kumar Vs. Ayyakannu* where basic structure of the suit is not altered and amendment sought relates to the nature of the relief prayed for it would not amount to introducing a fresh plea nor would it amount to changing the nature of the suit.

7. In the said decision a suit for injunction was declined to be amended to seek relief of possession. Hon'ble Supreme Court held that the amendment ought to be allowed holding that the proposed amendment would not change the structure of the suit.

8. As noted hereinabove, a prayer for damages @ Rs.32,650/- per month (stated to be mesne profits) till reinstatement has been made in the original plaint. What the plaintiff intends to do by way of amendment is to quantify the damages.

9. In view of the decision of the Supreme Court noted hereinabove, the amendment needs to be allowed. But, considering that the petitioner has delayed filing the amendment inspite of being cautioned when written statement

was filed on 23.2.2000 that the structure of the suit is

defective, yet inspite thereof, petitioner not taking step to correct himself, inconvenience caused to the defendant needs to be recompensed with adequate costs.

10. I note that the petitioner lingered on with the defective suit for over 5 years and 7 months.

11. I thus dispose of the petition setting aside the impugned order dated 16.1.2007. I allow the amendment prayed for but subject to payment of costs of Rs.25,000/- by the petitioner to the respondent. Cost would be paid in cash on the next date of hearing before the learned Trial Judge. On cost being paid, amended plaint would be taken on record for the reason, in said eventuality the amendment application filed by the petitioner would be treated as having been allowed.

12. Copy of this order be supplied dasti to counsel for the parties on payment of usual charges.

November 14, 2007 **PRADEEP NANDRAJOG, J.**
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